IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8377 of 1999
with
CIVIL APPLICATION NO. 4591 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IMPERIAL MINING SYNDICATE

Versus

STATE OF GUJARAT

Appearance:
MR MB GANDHI for Petitioner
MR HM BHAGAT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/06/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus to direct the State Government to renew the lease granted by it for a further period of 20 years

under the terms and conditions of the contract under the Mineral Concession Rules, 1960 as well as Mines and Mineral (Regulation & Declaration) Act, 1957 and for quashing and setting aside the order dated 1.10.1999 of the Mining Tribunal in Revision Application No. 1/Guj-4/92-MIV/RC-I/RC-II confirming the order dated 4.7.1989 of the State Government refusing to renew the mining lease for bauxite over an area of 249 acres and 87 gunthas in village Kennedy/Navodra, Dist. Jamnagar.

2. The petitioner was granted mining lease for the aforesaid purpose in respect of the above land in the year 1962, for a period of 20 years. Before the lease period was to expire, the petitioner applied for its renewal. The said application was rejected by the State Government on the following grounds:

(i) The applicant could not give any proof or documentary evidence to show that the entire area was of low grade bauxite.

(ii) The petitioner was found to be in arrears in payment of royalty amounting to Rs. 2,25,991.00.

(iii) It was the policy of the State Government to allow renewal only to those applicants who were interested in setting up value added industry.

The petitioner therefore filed a revision application before the Mining Tribunal. Ultimately by the impugned order the revision application came to be dismissed. Hence the present petition.

3. Learned counsel for the petitioner, Mr. M.B. Gandhi, has challenged the decision of the Mining Tribunal on the following grounds:-

(i) That the petitioner had paid all the government dues and therefore the Tribunal ought to have given a finding that the petitioner was not in arrears.

(ii) The petitioner had a right to get the renewal of mining lease and the petitioner's request could not have been rejected only on the ground that the petitioner had not set up any industry for manufacturing value added product, a product which would require bauxite as raw material. It is submitted that the bauxite available on the land in question was low grade bauxite which could not be used in manufacturing any product.

4. On the other hand, the learned counsel for the respondents has opposed the petition and submitted that there is nothing on record to show that the petitioner had cleared all arrears and in any view of the matter, it was the policy of the State Government not to give any bauxite lease for trading activity in Jamnagar and that the lease is to be given only for a value added industry.

5. Having heard learned counsel for the parties, it appears to the court that while the contention advanced on behalf of the petitioner does not deserve to be accepted, certain directions are required to be issued.

6. As far as the contention that the petitioner has a right to get renewal of lease, Rule 26(1) of Mineral Concession Rules, 1960, (hereinafter referred to as `the Rules) provides for renewal in the following terms:

> "The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for"

A perusal of the above rule makes it clear that the State Government has power to refuse to grant renewal of a mining lease. What is provided for in Rule 26(1) of the Rules is giving an opportunity of hearing to the applicant and the reasons for refusal to be recorded and communicated to the applicant. Hence renewal is not a matter of right but the Government can refuse to renew the lease for valid reasons.

7. In the instant case, neither of the reasons given by the State Government i.e. arrears or policy decision can be said to be irrelevant or arbitrary. There is, of course, some dispute about the question of payment of Government dues; that is a factual aspect which could be verified by the State Government as and when the occasion arises. However, since the renewal has been refused on the ground of policy decision taken by the Government to grant mining lease only in favour of those who are interested in setting up value added industry, it would not be within the province of this Court to sit in appeal over such policy decision. The learned Counsel for the petitioner has vehemently submitted that the bauxite available from the land in question is low grade bauxite which cannot be used in any value added industry. In this connection, it will not be out of place to quote the following observations in paragraph 18 of the order of

the Tribunal:-

"The third main contention of the petitioner is that Gujarat Mineral Development Corporation (GMDC)'s alumina project is not viable. The learned representative of the State Government vehemently denied this and submitted that the State Government and GMDC have an ambitious plan for setting up a 7.5 million tonnes per annum capacity alumina plant for which 54 million tonnes of metallurgical grade I & II of bauxite will be required which will be sourced from the scattered deposits of Kutch, Jamnagar and Junagadh districts. As viability of GMDC's alumina project or its setting up is not a ground of rejection of renewal of mining lease application of the petitioner, we refran from commenting on this point."

It therefore appears that there are possibilities that the GMDC may come out with a alumina project or any other company or firm may come out with a viable proposal to set up value added industry in Jamnagar for which the bauxite from the land in question can be utilised as raw material. Granting any relief to the petitioner at this stage and not giving the State Government an opportunity of exploring the possibility would render the policy of the State Government nugatory and it would amount to Court sitting in appeal over the policy decision of the State Government, when the policy decision of the Government cannot be said to be arbitrary.

8. In view of the above discussion, the following order is passed:-

Within two months from the date of receipt of a certified copy of this order, the respondents shall work out the arrears, if any, payable by the petitioner to the Government, and the petitioner shall pay the same within two months of receiving the intimation to that effect.

The decision of the State Government not to renew the mining lease in question in favour of the petitioner is not interfered with. However, the State Government shall make all possible attempts to explore the possibility of entrepreneurs coming forward with a proposal to set up value added industry which can utilise bauxite from the land in question as raw material. Such attempt shall be made as expeditiously as possible and if no party comes forward with any such proposal till 30.6.2001, the State Government shall reconsider its

decision and consider the petitioner's application for renewal of the mining lease afresh subject to the liability of the petitioner to clear all the arrears of government dues and subject to the fulfilment of other conditions in accordance with rules and regulations. It will also be open to the Government to renew the lease for a period shorter than 20 years.

It is clarified that when the Government invites any proposal, it will be open to the petitioner also to submit its proposal for any value added industry and in case the petitioner comes with a proposal to set up value added industry as a joint venture with any other party, the same shall be taken into consideration.

The petition is disposed of accordingly.

9. Since the main petition is disposed of, the Civil Application does not survive. The Civil Application stands disposed of accordingly.

10. The petitioner shall serve a certified copy of this order on the respondents within one month from today.

(M.S. SHAH, J)
(pkn)